
OLR Bill Analysis

SB 208 (File 190, as amended by Senate "A")*

AN ACT CONCERNING PHARMACY REWARDS PROGRAMS AND PROTECTED HEALTH INFORMATION.

SUMMARY:

This bill requires a retailer to give consumers a written, plain-language summary of a pharmacy reward program's terms and conditions before enrolling consumers in the program. Under the bill, a "pharmacy rewards program" is a promotional arrangement where a retailer gives a consumer store credits, discounts, or other tangible benefits in exchange for the consumer filling prescriptions through the retailer or its affiliate.

The bill requires additional disclosures about the use of protected health information if consumers must sign a HIPAA authorization form to participate in the programs. The bill defines a "HIPAA authorization" as permission to disclose medical records that meets the privacy requirements of the federal Health Insurance Portability and Accountability Act of 1996 or its associated regulations (see BACKGROUND).

And the bill requires certain terms, if they are used, to be defined in the (1) promotional materials, (2) plain-language summary, and (3) HIPAA authorization.

A violation of the bill's requirements is deemed an unfair or deceptive trade practice.

*Senate Amendment "A" (1) defines "HIPAA authorization," "marketing," and "protected health information"; (2) eliminates the plain-language summary's required disclosure statement about HIPAA contained in the original bill; and (3) removes certain terms that must be defined in the retailer's documents.

EFFECTIVE DATE: July 1, 2014

HIPAA AUTHORIZATION FORM

The bill requires retailers that make consumers sign a HIPAA authorization form in order to participate in their pharmacy rewards programs to include the following information on their form:

1. the specific uses or disclosures of protected health information the authorization allows;
2. whether protected health information the retailer obtains will be disclosed to third parties and, if so, that the information will not be protected by federal or state privacy laws;
3. which, if any, third parties will have access to the health information;
4. how to revoke the authorization; and
5. that the consumer is entitled to a copy of the signed authorization.

This information must be provided next to where the form is signed.

Federal regulations already require authorizations to include such things as a description of protected health information that will be used and disclosed, the people allowed to make the use or disclosure, and the parties who may receive the information (45 CFR §§ 160 and 164).

RELEVANT TERMS

The bill also requires certain terms, if they are used, to be defined in promotional materials, the plain-language summary, and on the HIPAA authorization form next to where it is signed. The terms included are:

1. HIPAA,
2. Health Insurance Portability and Accountability Act of 1996,

3. HIPAA authorization,
4. protected health information, and
5. marketing.

Under the bill, “protected health information” includes individually identifiable health information transmitted by or maintained in electronic media or transmitted or maintained in some other form, but not information included in certain records such as education or employment records. “Marketing” generally means making a communication about a product or service to encourage the purchase or use of the product or service. It does not include certain communications about current prescriptions or health care treatment and operations.

BACKGROUND

HIPAA

The HIPAA “privacy rule” sets national standards to protect the privacy of health information. It protects individually identifiable health information by defining and limiting the circumstances under which covered entities may use or disclose such information.

Connecticut Unfair Trade Practices Act (CUTPA)

CUTPA prohibits unfair and deceptive acts or practices. It allows the consumer protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorney’s fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

COMMITTEE ACTION

General Law Committee

Joint Favorable

Yea 17 Nay 0 (03/13/2014)

Judiciary Committee

Joint Favorable

Yea 40 Nay 0 (04/14/2014)